

Message Text

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C O N F I D E N T I A L NASSAU 1827

E. O. 11652: GDS

TAGS: PFOR CPRS BF

SUBJ: EXTRADITION - ROBERT L. VESCO - HEARING DAY TEN

BEGIN SUMMARY: VESCO ATTORNEY DUPUCH COMPLETED HIS SUBMISSION ON MOTION TO DISMISS. WALLACE-WHITFIELD WILL BEGIN HIS RESPONSE NOV 28. MAGISTRATE OSADEBAY WILL PROBABLY ISSUE RULING ON MOTION FRIDAY OR MONDAY. END SUMMARY.

1. DUPUCH WOUND UP HIS SUBMISSION CALLING FOR DISMISSAL OF EXTRADITION REQUEST FOR FAILURE TO STATE A CASE AGAINST VESCO. HE REPEATED SOME OF THE JURISDICTIONAL ARGUMENTS HE HAD MADE BEFORE AND SOUGHT TO RAISE AGAIN THE QUESTION OF THE VALIDITY OF THE EXTRADITION TREATY. OSADEBAY CUT HIM OFF ON LATTER POINT, SAYING HE WAS SATISFIED THAT A BINDING TREATY EXISTED AND WOULD NOT LOOK BEHIND IT. DUPUCH SAID THAT HE ONLY WISHED TO RAISE QUESTION OF WHETHER USG COULD OBTAIN EXTRADITION OF VESCO ON ONE CHARGE, TRY HIM ON OTHERS ONCE HE WAS RETURNED AND ARGUE THAT THE TREATY PROVISION BARRING SUCH PRACTICE WAS NOT BINDING. OSADEBAY SAID THAT THAT ISSUE WAS ONE FOR THE GCOB EXECUTIVE BRANCH TO TAKE UP, SINCE JUDICIARY'S ROLE WAS CONFINED, IN EVENT VESCO LOSES IN PRESENT HEARING, TO REMANDING HIM TO MINISTRY FOR SURRENDER TO USG.

2. DUPUCH THEN TURNED TO SUBMISSIONS ON FACTUAL ISSUES. HE
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SAID RE BUHL AFFIDAVITS THAT MAGISTRATE HAD TWO OPTIONS:

EITHER IGNORE FIRST (ANTI-VESCO) AFFIDAVIT AND RELY ON SECOND, OR IGNORE THEM BOTH. DUPUCH ARGUED THAT UNDER THE FIRST OPTION NO EVIDENCE OF FRAUD OR ANY OTHER OFFENSE EXISTED IN THE CASE. UNDER THE SECOND OPTION, ONLY THE EVIDENCE OF RICHARDSON AND OST REMAINED; DUPUCH SOUGHT TO PUNCH HOLES IN THOSE AFFIDAVITS. MAGISTRATE APPEARED TO AGREE THAT EVIDENCE INTRODUCED BY USG SIDE SEEMED TO SAY THAT CLAY HAD ASKED OST TO SEND THE \$50,000 TELEGRAM, AND THAT ON THE FACE OF IT VESCO WAS NOT IMPLICATED. DUPUCH ATTACKED LOWE'S "POSE" AS AN IMPARTIAL EXPERT WHEN IN FACT HE WAS THE US PROSECUTOR OF VESCO.

3. WALLACE-WHITFIELD ASKED FOR ADJOURNMENT UNTIL 10:30 NOV 28 IN ORDER TO PREPARE RESPONSE TO DUPUCH'S MOTION (WHITFIELD TOLD EMBOFF HE EXPECTED HIS RESPONSE COULD TAKE AS LONG AS THREE DAYS TO PRESENT). OSADEBAY CLEARLY PREFERRED TO BEGIN THE RESPONSE AFTERNOON OF NOV 27, BUT AGREED TO DELAY. IN PREPARING HIS RESPONSE, MAGISTRATE ASKED WHITFIELD TO ADDRESS THREE POINTS OF BAHAMIAN LAW: (A) WHETHER A MERE REQUEST FOR MONEY, MADE WITH FRAUDULENT INTENT BUT WITHOUT ANY FALSE PRETENSE BEING COMMUNICATED WAS AN OFFENSE; (B) IF RICHARDSON AND OST, IN REQUESTING TRANSFER OF FUNDS, WERE ACTING INNOCENTLY AND HENCE WERE NOT GUILTY OF ANY OFFENSE, WHETHER VESCO COULD BE CHARGED WITH AIDING AND ABETTING THESE INNOCENT PARTIES; (C) SAME AS PREVIOUS QUESTION, BUT CONFINED TO THE OFFENSE OF "CONCURRING" UNDER BAHAMIAN LAW.

4. COMMENT: AFTER CONCLUSION OF WHITFIELD'S RESPONSE, OSADEBAY WILL PROBABLY WISH TO RULE ON MOTION IN WRITING. THIS COULD DELAY RULING UNTIL AFTERNOON OF NOV 30 AT EARLIEST. SHOULD THE MOTION BE DENIED, DUPUCH WILL BEGIN TO PRESENT EVIDENCE FOR THE DEFENSE. ASTO CONCLUSION OF TODAY'S SESSION, US JUSTICE DEPARTMENT REPRESENTATIVE SEEMED PESSIMISTIC AT PROBABLE DIRECTION OF OSADEBAY'S RULING. WHITFIELD, HOWEVER, DID NOT SHRE THIS VIEW, ASSERTING TO EMBOFF THAT EVEN IF HE DID NOT BOTHER TO RESPOND TO DUPUCH'S SUBMISSION, MAGISTRATE WAS SUFFICIENTLY UNIMPRESSED BY DUPUCH'S PRESENTATION TO DENY OUT OF HAND THE MOTION TO DISMISS. MOST REALISTIC ESTIMATE MAY FALL SOMEWHERE BETWEEN, SOME OUTSIDE OBSERVERS PREDICTING THAT, WHATEVER OSADEBAY'S PERSONAL VIEWS AND THE LIKELY ULTI-CONFIDENTIAL

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MATE OUTCOME, MAGISTRATE WILL FEEL CONSTRAINED TO DENY DUPUCH'S MOTION AND FORCE HIM TO HIS PROOF.
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